IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 1462 of 2004(Y)

PETITIONERS:

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1. **KERALA P.W.D. ELECTRICAL WING EXECUTIVE EMPLOYEES ASSOCIATION, PRESIDENT, JAISON MATHEW, AGED 40, S/O. MATHEW, MANOTHOTTAM,MANTHOTTAM HOUS,E IDICHIRA, PALAI, KOTTAYAM DISTRICT,. .**

2. **JAISON MATHEW, AGED 40 YEARS, S/O. MATHEW, MANTHOTTAM, VEDICHIRA, PALAI, KOTTAYAM DISTRICT.(LINEMAN, P.W.D. ELECTRICAL WING SECTION, MINI CIVIL STATION, THODUPUZHA)**

3. **V.JAYAPRAKASH, FIRST GRADE OVERSEER, P.W.D.ELECTRICAL WING, SUB DIVISION, KERALA LEGISLATIVE COMPLEX, TRIVANDRUM.**

4. **J.SIMON, LINEMAN, P.W.D. ELECTRICAL WING WEST SECTION, THIRUVANANTHAPURAM.**

5. **A.DILEEPKUMAR, HELPER (ELECTRICAL REDESIGNATED LINEMAN) P.W.D.ELECTRICAL WING, MEDICAL COLLEGE SECTION, THIRUVANANTHAPURAM.**

6. **B.V. SUKESH, HELPER (ELECTRICAL (RE-DESIGNATED LINEMAN), P.W.D. ELECTRICAL WING, SECRETARIAT SECTION, THIRUVANANTHAPURAM.**

7. **R.PADMAKUMAR, LINEMAN,P.W.D. ELECTRICAL WING SECTION, MEDICAL COLLEGE HOSPITAL, KOTTAYAM.**

8. **M.G.MOHANAKUMAR, LINEMAN, P.W.D. ELECTRICAL WING, NORTH SECTION, THIRUVANANTHAPURAM.**

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9. G.RAVEENDRAN, HELPER (ELECTRICAL)
RE-DESIGNATED LINEMAN) P.W.D. ELECTRICAL WING,
WEST SECTION, THIRUVANANTHAPURAM.

10. S.BABURAJ, LINEMAN, P.W.D.ELECTRICAL
WING, SECRETARIAT SECTION, THIRUVANANTHAPURAM.

11. B.SUDARSANAN, LINEMAN, P.W.D. ELECTRICAL
WING, SECRETARIAT SECTION, THIRUVANANTHAPURAM.

BY ADV. SRI.JOHNSON MANAYANI

RESPONDENTS:
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1. THE SECRETARY,
PUBLIC WORKS DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. THE CHIEF ENGINEER,
OFFICE OF THE CHIEF ENGINEER, P.W.D. DEPARTMENT
(ADMINISTRATION) THIRUVANANTHAPURAM.

3. THE STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECRETARY, SECRETARIAT, TRIVANDRUM.

BY ADV. SRI.A.T.BABICHAN
BY GOVERNMENT PLEADER SRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.1462/2004 Y

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE G.O.(RT) NO.464/97 PW&T TRIVANDRUM DTD. 5/04/1997 OF THE 3RD RESPONDENT.

EXT.P2: COPY OF THE ORDER DTD. 25/11/1998 OF THE 2ND RESPONDENT.

EXT.P3: COPY OF THE ORDER OF THE 3RD RESPONDENT DTD. 25/01/1999.

EXT.P4: COPY OF THE LETTER DTD. 11/06/1999 OF CHIEF ENGINEER,PWD.

EXT.P5: COPY OF THE NOTE DTD. 21/06/1999 OF THE 3RD RESPONDENT.

EXT.P6: COPY OF THE ORDER DTD. 21/07/1999 BY THE 2ND RESPONDENT.

EXT.P7: COPY OF THE ORDER DTD. 15/01/2001 OF THE CHIEF ENGINEER PWD (ADMN.).

EXT.P8: COPY OF THE COMMUNICATION OF THE 2ND RESPONDENT TO THE CHIEF ENGINEER DTD. 1/03/1999.

EXT.P9: COPY OF THE LETTER DTD. 19/09/2000 OF THE 1ST RESPONDENT.

EXT.P10: COPY OF THE LETTER DTD. 5/10/2003 OF THE 2ND RESPONDENT.

EXT.P11: COPY OF THE LETTER DTD. 23/05/2003 OF THE 2ND RESPONDENT.

EXT.P12: COPY OF THE APPOINTMENT ORDER ISSUED BY THE 2ND RESPONDENT DTD. 17/07/2000.

EXT.P13: COPY OF THE REGULARISATION ORDER IN ONE OF THE APPOINTEE IN EXHIBIT P12.

EXT.P14: COPY OF THE ADVISE LETTER.

EXT.P15: COPY OF THE COMPLAINT FILED BEFORE THE 2ND RESPONDENT DTD. 20/08/2003.

..2/-

EXT.P16: COPY OF THE PETITION DTD. 25/06/2003 FILED BEFORE THE 2ND RESPONDENT.

EXT.P17: COPY OF THE PETITION FILED BEFORE THE 2ND RESPONDENT DTD. 25/08/2003.

EXT.P18: COPY OF THE PETITION FILED BEFORE THE 3RD RESPONDENT DTD. 11/06/2003.

EXT.P19: COPY OF THE PETITION DTD. 11/06/2003.

EXT.P20: COPY OF THE PETITION DTD. 15/08/2003 FILED BEFORE THE 2ND RESPONDENT.

EXT.P21: COPY OF THE LETTER DTD. 8/08/2001 BY THE P.S.C.

EXT.P22: COPY OF THE ORDER DTD. 28/01/2004 OF CHIEF ENGINEER.

EXT.P23: COPY OF THE ORDER DTD. 18/02/2005 OF SUPERINTENDING ENGINEER.

/TRUE COPY/

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K.BALAKRISHNAN NAIR,J.

WP(C)NO.1462 OF 2004-Y

Judgment

The first petitioner is an association of the employees of the Electrical Wing of the PWD. The other petitioners are the members of the first petitioner association. All of them were appointed in the Electrical Branch of the Kerala Engineering Subordinate Service as Helper. By Ext.P1 order dated 05.04.1997, the Government decided to re-designate the post of Helper (Electrical) as Lineman Grade II in the scale of pay of Rs.800-1300. It was also decided to treat in future, the post of Helper (Electrical) as the feeder category to the post of Lineman Grade II. Ext.P2 is the pay revision order dated 25.11.1998. As per that GO, the posts of Lineman Grade I and Lineman Grade II were merged as one post of Lineman with the scale of pay of Rs.3050-5230. As per Ext.P4 GO dated 11.06.1999, the re-designation of the post of Helper as Lineman Grade II ordered by Ext.P1 w.e.f. 05.04.1997 was given effect from 01.03.1997. This is reiterated in Ext.P5 Note dated 21.06.1999, which says that the re-designation of Helper (Electrical) as Lineman will have effect from 01.03.1997 and it is further reiterated in Ext.P6 order dated 21.07.1999. The effect of the above orders is that petitioners 2 to 11, who were Helpers in the scale of pay of Rs.775-1065 (pre-revised) were granted the designation of Lineman Grade II with the pre-revised scale of Rs.800-1300. Upon pay revision, their pay scale became Rs.3050-5230. The pre-revised scale of pay of Lineman Grade I, Rs.950-1650 was also revised as Rs.3050-5230. Thus, the petitioners started drawing the scale of pay of Rs.3050-5230

w.e.f. 01.03.1997.

2. While so, the Government issued Ext.P9 order dated 19.09.2002, ordering that while making recruitment through the Public Service Commission, a Helper can be appointed only from the list published for appointment as Helper and a Lineman can be appointed only from the list of Lineman. Apparently, based on Ext.P9, the Chief Engineer issued Exts.P10 and P11 orders, stating that petitioners 2 to 11, who were originally recruited as Helpers are eligible to get salary only in the revised scale of pay of Rs.2610-3680 which is the scale of pay of Helper in Ext.P2 pay revision GO. Based on Exts.P10 and P11, consequential action is taken to recover the excess pay drawn by petitioners 2-11 in the scale of pay applicable to Lineman. So, this Writ Petition is filed, seeking the following reliefs :

> *"i. issue a writ of mandamus or any other writ, direction or order, commanding the respondents to treat the Exhibits P1, P2 and P6 are applicable to the petitioners and similarly situated persons and prepare a seniority list on the said lines.*
>
> *ii. declare that the respondents are bound to abide by Exts.P1, P2 and P6 and the petitioners and similarly situated persons entitled for seniority on the said lines.*
>
> *iii. issue a writ of mandamus commanding the respondents to recast the seniority list on the basis of Exts.P1, P2 and P6.*

iv. issue a writ of certiorari or any other writ, direction or order, quashing Exts.P9, P10 and P11.

v. declare that the petitioners and similarly situated persons are entitled for the salary and time bound higher grade and emoluments prescribed under Exts.P1, P2 and P6.

vi. declare that the last category, in the Kerala Engineering Subordinate Service (Electrical Branch), PWD Electrical Wing is Lineman in view of Exts.P1, P2 and P6."

2. The second respondent has filed a counter affidavit, explaining the circumstances under which the above action was taken. It is also submitted that steps are being taken to amend the Special Rules and to redress the grievance of the petitioners.

3. I heard the learned counsel on both sides. The Government are competent to re-designate any post and also order that one post will be an addition to the cadre of another post. Of course, when recruitment is to be made to a new post, the qualifications and method of appointment have to be prescribed. The same can be done by executive orders or amending the Special Rules. At present, as per the Special Rules, there are posts of Helper, Assistant lineman and Lineman. Direct recruitment through the Public Service Commission can be made to the posts of Helper and Lineman as per the method of appointment prescribed in the Rules. The post of Assistant Lineman is no longer in existence in the Department. It was earlier re-designated as Lineman Grade II. The post of

Helper held by petitioners 2 to 11 was re-designated as Lineman Grade II. Thereafter, they were upgraded to the post of Lineman. Such up-gradation of the existing incumbents in a post to a higher post is not unknown in service parlance. It is well within the powers of the Government to issue such orders. Therefore, petitioners 2 to 11 are legally continuing in the post of Lineman. It is declared so. Therefore, they are entitled to get all emoluments attached to the said post. The steps taken under the impugned orders to reduce their salary to that of the post of Helper are ultra vires and unauthorised. Those proceedings are quashed. This declaration shall enure to the benefit of all employees, who are similarly placed like petitioners 2 to 11.

The Writ Petition is allowed as above.

10.07.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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